

The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone. See 86 Ill. Adm. Code 130.1951. (This is a PLR).

December 11, 2000

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of September 25, 2000. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, COMPANY we respectfully request the Illinois Department of Revenue to issue a private letter ruling pursuant to 2 Ill. Adm. Code Section 1200.110 with respect to the following factual situation.

General Information

1. Enclosed please find an original Form IL-2848 Power of Attorney, authorizing FIRM to represent COMPANY (the 'Company') before the Illinois Department of Revenue (the 'Department').
2. This Private Letter Ruling ('PLR') is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the Retailer's Occupation Tax consequences of the actual business practices of the Company.
3. The Company is not currently engaged in litigation with the Department in regard to this or any other tax matter.
4. To the best knowledge of the Company's personnel, and to the best of FIRM's knowledge, the Department has not previously ruled regarding this matter for the Company. The Company has not submitted a similar issue to the Department.

5. The Company requests that certain information be deleted from the PLR prior to dissemination to others. The Company requests that its name, address, location and rated megawatts of its facility and the name of its representative be deleted.
6. The Company knows of no authority contrary to the authorities referred to and cited below.

Statement of Material Fact

1. The Company is in the business of owning and operating electric generating facilities.
2. The Company is constructing a nominal # megawatt natural gas fired power plant (hereinafter referred to as the 'Facility') in unincorporated COUNTY, Illinois.
3. It is anticipated that the Facility will be located within the COUNTY Enterprise Zone.
4. The construction of the Facility will begin in January 2001.
5. The Company will purchase significant materials from a retailer located within unincorporated COUNTY, as provided in 86 Ill. Admin. Code Section 130.1951, for the purpose of qualifying for the 'enterprise zone building materials exemption.'
6. The following items represent the significant materials that will be purchased from a retailer within the enterprise zone for incorporation into the Facility. Please refer to the attachment summary that describes the manner in which they are affixed to the realty. These materials will be referred to herein after as 'the materials.' The significant materials include:
 - a) Concrete foundations for structure and equipment support.
 - b) Two (2) natural gas fired turbine generators.
 - c) Two (2) heat recovery steam generators.
 - d) One (1) steam turbine generator.
 - e) Inlet chilling system, cooling tower, condenser, water treatment system, and continuous emissions monitoring system.
 - f) Electrical equipment including, three (3) main transformers, three (3) power circuit breakers, three (3) support structures and above-ground and below-ground electrical conduit and cabling.
 - g) Piping for water and natural gas supply and wastewater discharge.

Ruling Requested

The major materials identified in the attachment qualify as 'building materials' for the purpose of the Retailer's Occupation Tax deduction provided in 35 ILCS 120/5k and 86 Ill. Admin. Code Section 130.1951(1).

Relevant Authorities

The Illinois Retailers' Occupation Tax Act [35 ILCS 120/2] imposes a tax on persons engaged in the business of making retail sales of tangible personal property. In accordance with Section 2-10 of the Act, this tax is measured by a seller's gross receipts [35 ILCS 120/2-10]. Pursuant to Section 5k of the Act [35 ILCS 120/5k], a retailer whose place of business is located within a county or municipality which has established an enterprise zone, and who makes sales of 'building materials' to be incorporated into real estate in that enterprise zone by remodeling, rehabilitation or new construction, may deduct receipts from such sales in the calculation of taxable gross receipts.

For the purposes of our analysis, we have assumed that the Company will purchase all qualifying building materials from a retailer located within unincorporated COUNTY.

Therefore, our analysis focuses on the requirement that, in order to qualify for the deduction, the materials must constitute 'building materials' as provided in 86 Ill. Adm. Code Sec. 130.1951(a)(7). The regulation also states that to qualify as a 'building material,' the item must be for 'physical incorporation into real estate.'

In order to qualify for the deduction as provided in 35 ILCS 120/5k, the materials must constitute 'building materials' as provided in 86 Ill. Adm. Code Sec. 130.1951(a)(7).

86 Ill. Admin. Code Sec. 130.1951(a)(7) provides:

In order to qualify for the deduction, the materials being purchased must be building materials. That is, they must be purchased for *physical incorporation* into real estate. (Emphasis added)

Therefore, the question is whether the materials described in the Attachment will qualify as 'building materials,' that is, whether the materials are purchased for 'physical incorporation into real estate.'

The Department in Private Letter Ruling 99-0009 (March 9, 1999) ruled that pipe racks, pipe, supports, and piping tie-ins installed at a natural gas fired power plant would constitute 'building materials' under the Department's regulations because they were permanently affixed to real estate. Further, since the real estate was located within an enterprise zone such items incorporated into real estate could be purchased tax-free from qualified retailers.

In a more recent decision, the Department in Private Letter Ruling ST 00-0013 (July 7, 2000) found that certain materials incorporated into realty within an electricity generating facility qualified as a building material pursuant to the Department's regulations. The Department found that turbine generators, electrical transformers, electrical cabling, piping and other materials that are permanently affixed to real estate qualify as a 'building material' for purposes of the deduction provided in 35 ILCS 120/5k and 86 Ill. Admin. Code Sec. 1951(a)(1).

The facts and issues stated in ST 00-0013 are virtually identical to the issues at hand in this letter ruling request. The materials at issue here will be permanently and physically attached to the realty. Please refer to the Attachment for details on the method of affixation. Removal of the materials after affixation, would result in substantial damage to the materials and realty. The anchor bolts, which are embedded in the concrete

foundation, would have to be removed. Removing the anchor bolts would cause damage to the anchor bolts, the foundation, the underground electrical cable and piping, and possibly cause damage to the building itself. Therefore, this demonstrates that the equipment, after being attached, is permanently affixed.

Conclusions

35 ILCS 120/k provides that a retailer whose place of business is located within a county or municipality which has established an enterprise zone, and who makes sales of 'building materials' to be incorporated into real estate in that enterprise zone by remodeling, rehabilitation or new construction, may deduct receipts from such sales in the calculation of taxable gross receipts.

The deduction provided in 35 ILCS 120/5k is applicable to receipts from the sales of 'building materials.' In order to qualify as 'building materials,' the items must be physically incorporated into real estate.

The materials in question qualify as 'building materials' for purposes of the deduction provided in 35 ILCS 120/5k. The materials are physically and permanently incorporated into realty as described in the Attachment. Therefore, since the materials qualify as building material and are incorporated into realty within an enterprise zone, the materials may be purchased from a qualifying retailer free from Retailer's Occupation Tax and Use Tax.

We respectfully request that the Department issue a ruling stating that the materials described in the attachments qualify as 'building materials' for the purposes of the deduction provided in 35 ILCS 120/5k. If the Department can not conclude that the materials qualify as 'building materials,' I request the Department contact me to determine what additional information is required or allow the taxpayer to rescind this ruling request.

Enclosed is a copy of 86 Ill. Adm. Code 130.1951 concerning Enterprise Zones. The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone. You assert in your letter that the materials are being purchased from a retailer located in the jurisdiction that created the enterprise zone into which the building materials will be incorporated. You have requested that the Department rule on whether the items being incorporated are building materials as defined in the regulations. Section 130.1951(a) states, in part, as follows:

- 7) In order to qualify for the deduction, the materials being purchased must be building materials. That is, they must be purchased for physical incorporation into real estate.

In the following paragraphs the Department rules on whether the items described in your letter qualify as building materials.

The concrete used to construct the equipment, storage tank and transmission line support structure foundations is a qualifying building material. The steel reinforcing bars placed within the

foundation for structural strength and the embedded anchor bolts qualify as building materials. The electrical conduit and piping that will be embedded in the foundations qualify as building materials.

Generally, items that become permanently incorporated into realty when conducting sitework development qualify as building materials. Items, such as asphalt and fencing materials that become permanently installed improvements to realty when conducting roadway paving and site security fencing qualify as building materials.

The gas combustion turbines that are constructed on site and permanently affixed to the foundation qualify as building materials. It is the Department's understanding that such turbines are physically attached to a concrete foundation with anchor bolts and hardwired to underground and above ground electrical cabling and hard piped to natural gas, lubrication oil and water supply piping. The generator that is constructed on-site and permanently affixed to the foundation with anchor bolts and connected to underground and electrical cabling and cooling water piping qualifies as a building material. The accessory modules that are housed in prefabricated steel compartments that are attached to a concrete foundation by support steel frames embedded with anchor bolts and interconnected to the turbines with hardwired cabling and associated hardware, qualify as building materials.

Your letter indicates that the heat recovery steam generators are delivered to the site in multiple pre-fabricated tube bundle modules and set into place within a structural support frame. Further the generators are permanently attached to the foundation with anchor bolts and hardwired and hard piped to underground and aboveground electrical cabling and piping for the supply of natural gas, make-up water and process drains. These heat recovery steam generators qualify as building materials. The stack, which is attached to the concrete foundation with anchor bolts and welded together, qualifies as a building material.

It is our understanding that the steam turbine system including the steam turbine, turning gear, atmospheric drain tank, piping, valves and instrumentation are constructed on site and permanently affixed to the foundation. Your letter indicates that the turbine is physically attached to the foundation with anchor bolts and hardwired and hard piped to underground and aboveground electrical cabling and piping for the supply of steam, lubrication oils and cooling water. The components of this steam turbine system qualify as building materials. The generator that is a part of this system and is constructed on site and permanently affixed to the foundation with anchor bolts and connected to underground and aboveground electrical cabling and cooling water piping qualifies as a building material. The accessory modules for starting, controlling and support of the unit that are anchored to the foundation and support steel frames and are interconnected to the turbines with hardwired cabling and associated hardware qualify as building materials

The inlet chilling system, consisting of a tower used for heat exchange and associated electrical and piping equipment, which is attached to foundations with anchor bolts and integrated with the gas fired turbine generators via hardwired cabling and underground and aboveground piping for water supply, qualifies as a building material. The cooling tower, which is a large structural tower, built within a concrete basin and permanently anchored to the basin, qualifies as a building material. The condenser, which is anchored in place on its concrete foundation and welded to the exhaust neck of the steam turbine generator, qualifies as a building material. The demineralized water treatment system, which is permanently anchored to its foundation by anchor bolts, qualifies as a building material.

The continuous emissions monitoring system, according to the additional information you provided, consists of:

- “A prefabricated building (approximately 10’X10’X10’) that is permanently affixed to a concrete foundation that is approximately 1 foot in depth. The building is attached to the foundation by twenty (20) three quarter inch ($\frac{3}{4}$ ”) long anchor bolts.
- Equipment located within the CEMS building is permanently attached to the concrete foundation and/or to the building’s structural steel with anchor bolts. The equipment is also hardwired into electrical cabling from the power supply transformer.
- Instrumentation probes securely anchored within the HRSG’s stacks. The stacks are approximately 180’ in height and attached with anchor bolts to a concrete foundation. The instrumentation probes are permanently bolted to the inside of each stack and attached to the equipment located within the CEMS building by cabling.”

This continuous emissions monitoring system, as described above, qualifies as a building material.

The piping that is installed 4 to 10 feet below the ground qualifies as a building material. The aboveground piping that is either supported by a pipe rack that is physically attached to the foundation by anchor bolts or has connections that are physically welded to the equipment, qualifies as a building material.

In regards to the electrical equipment, the main and auxiliary transformers that are attached with anchor bolts to a concrete foundation qualify as building materials. The circuit breakers that are attached to a concrete foundation by anchor bolts qualify as building materials. The support structures that are attached to a concrete foundation by anchor bolts qualify as building materials. The underground cabling that is housed in conduit, encased in a concrete housing “duct bank”, or is buried directly, does qualify as a building material. The above ground cabling that is routed within a protective cable tray and conduit and is physically attached to the foundations or equipment supports that are attached to the foundation by anchor bolts qualifies as a building material.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.